

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Waipahu, Hawaii)

PACIFIC SHIPYARD INTERNATIONAL, LLC

Employer

and

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 368, AFL-CIO

Petitioner

37-RC-4093**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record 1/ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization involved claims to represent the employees of the Employer. 3/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 5/

All full-time and regular part-time ships maintenance worker I, ships maintenance worker II, laborer I, laborer II and laborer III employees employed by the Employer in the State of Hawaii; excluding all other employees, clerical employees, confidential employees, guards and/or watchpersons, managers, and supervisors 6/, as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election

(OVER)

date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 368, AFL-CIO**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii 96850, on or before February 3, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by February 10, 2005.

Dated January 27, 2005

at San Francisco, California

/s/ Robert H. Miller

Regional Director, Region 20

- 1/ Following the close of the hearing, the parties executed a joint stipulation regarding, among others, the supervisory status of certain individuals and moved to reopen the record to receive their joint stipulation. The parties post hearing motion is hereby granted and the joint stipulation has been received into the record as Joint Exhibit 1.
- 2/ The parties stipulated that the Employer, a Hawaii corporation with a place of business located at 93-051 Waipio Access Road, Waipahu, Hawaii, is engaged in the repair and maintenance of decommissioned ships. During the 12-month period preceding the hearing, the Employer derived gross revenues in excess of \$500,000 and purchased goods valued in excess of \$50,000 directly from suppliers located outside the State of Hawaii. Based on the party's stipulation to such facts, I find that the Employer is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction in this matter.
- 3/ The parties stipulated, and I find that the Petitioner is a labor organization within the meaning of the Act.
- 4/ The parties stipulated, and I find, that there is no collective-bargaining agreement covering the employees in the petitioned-for unit and no contract bar to this proceeding.
- 5/ The parties stipulated, and I find, that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining. There are about 37 employees in the petitioned-for unit.
- 6/ The parties stipulated that the Project Manager, Maintenance Manager, Assistant Maintenance Manager, Electrician Foreman, Equipment/Machine Foreman, Shipfitter Foreman, Ships Maintenance Manager, Ship Maintenance Leader, Ships Maintenance Crew Leader I, and Ships Maintenance Crew Leader II have the authority, utilizing their own independent judgment, to hire, discharge, assign, reward and discipline employees. In these circumstances, I find that the individuals in the foregoing classifications are supervisors within the meaning of section 2(11) of the Act and exclude them from the unit.